

**COMMONWEALTH OF PUERTO RICO
DEPARTMENT OF THE TREASURY**

Regulation to amend Articles 2301-1(j), 2406-1 and 2603-1 and add Articles 2401-2, 2402-2, 2403-3, 2405-2, 2602(a)-2, 2602(d)-2, 2602(g)-2, 2705-2, 2801(a)-2, 6188-1 and 6189-1 to Regulation No. 7249 of November 14, 2006; enacted pursuant to Section 2303 of the Code, which authorizes the Secretary of the Treasury to adopt the Regulations related to the imposition, exemption, interpretation, administration, and collection of the sales and use tax.

Article 2301-1

Subparagraph (5) is hereby added to paragraph (j) of Article 2301-1 to read as follows:

"(5) Nexus.- Effective for transactions performed after July 31, 2007, the factors indicated below shall be considered to determine if a person is considered to be in the business of selling taxable items in the Commonwealth of Puerto Rico or, in other words, if there is a nexus between a merchant and the Commonwealth of Puerto Rico. To determine if a nexus has been created with Puerto Rico, sufficient to require compliance with the provisions of Subtitle BB of the Code, the following factors shall be considered:

- (i) if the merchant has establishments or offices in Puerto Rico;
- (ii) if the merchant has employees, agents, or representatives in Puerto Rico, who solicit business or carry out business transactions in the name of said retail seller;
- (iii) if the merchant owns tangible personal property or real property in Puerto Rico;
- (iv) if the merchant creates a nexus with Puerto Rico in any way, including, but not limited to the execution of purchase deeds in Puerto Rico, direct marketing or purchases by mail, radio, distribution of unsolicited catalogs, through computers, television, or any other electronic means, or advertisements in magazines or newspapers, or other means;
- (v) if there is an agreement or reciprocity with another jurisdiction of the United States, and said jurisdiction uses its taxing authority and its jurisdiction over the merchant in support of Puerto Rico's authority;

(vi) if the merchant accepts, expressly or implicitly, the tax levied by Subtitle BB of the Code; and

(vii) if the merchant has sufficient connection, or a relationship, with Puerto Rico or its residents of some sort, other than those described in clauses (i) through (vi), with the purpose or objective of creating a sufficient nexus with Puerto Rico to impose on the merchant the responsibility of collecting the SUT."

Article 2401-2

Article 2401-2 is hereby added to read as follows:

"Article 2401-2.- Sales tax effective for transactions performed after July 31, 2007.- (a) Effectiveness.- The provisions of this article shall be applicable to sales made after July 31, 2007. Insofar as this article does not establish a different treatment for a certain transaction, the provisions of Article 2401-1 of this Regulation shall be applicable.

(b) General rule.- Except when otherwise provided in this Regulation, a five point five (5.5) percent sales tax shall be imposed, collected, and paid over the sales price of taxable items in Puerto Rico. The application of the tax shall be subject to the exemptions allowed in Chapter 3 of Subtitle BB of the Code and in Chapter III of this Regulation. Additionally, a fixed tax rate of one point five (1.5) percent shall be imposed, collected, and paid, by virtue of Section 6189 of the Code, in a uniform and obligatory manner, in accordance with the same base, exemptions, and limitations included in Subtitle BB of the Code, without the need of approving a municipal ordinance to such effect.

Except in the case of municipalities that have entered into an agreement to such effects with the Secretary, the obligation to collect (and the merchant's corresponding obligation to deposit) the SUT for a fixed tax rate of one point five (1.5) percent shall be exclusive and obligatory, based on point five (0.5) percent by the Secretary and one (1.0) percent by the municipality.

(c) The total sales tax amounting to six (6) percent (five point five (5.5) percent indicated in paragraph (b) of this article, and point five (0.5) percent indicated in Section 6189 of the Code) shall be imposed and collected over the total sales price of every transaction, in the following manner:

Total Sales Price	Sales Tax
\$0.00 to \$0.07	\$0.00
\$0.08 to \$0.24	\$0.01
\$0.25 to \$0.41	\$0.02
\$0.42 to \$0.58	\$0.03
\$0.59 to \$0.74	\$0.04
\$0.75 to \$0.91	\$0.05

(1) When the calculation of the sales tax results in a fraction of half a cent (\$0.005) or more, the calculation of the sales tax shall be rounded up to charge an additional cent. On the other hand, when the calculation of the sales tax results in a fraction of less than half a cent (\$0.005), it shall not be rounded and an additional cent shall not be charged.

(2) The taxable items with a sales price between one cent (\$0.01) and seven cents (\$0.07) acquired in a transaction, shall not be exempt if the total sales price of the transaction is greater than seven cents (\$0.07).

The provisions of this subsection (2) are illustrated with the following examples:

Example 1: Pharmacy "X", located in a municipality for which the Department does not act as a centralized SUT collector and administrator, sells mints at five cents (\$0.05) each. "A" purchases one (1) mint. The total sales price of the transaction is five cents (\$0.05) and the pharmacy shall not collect the sales tax because the total sales price of the transaction is less than eight cents (\$0.08).

Example 2: Gas station "Z", located in a municipality for which the Department does not act as a centralized SUT collector and administrator, sells individual pieces of chewing gum at five cents (\$0.05) each. "N" purchases two (2) pieces of chewing gum. The total sales price of the transaction is ten cents (\$0.10), and therefore, the transaction is subject to the sales tax. "Z" shall collect eleven cents (\$0.11), ten cents (\$0.10) for the sales price of the chewing gum and one cent (\$0.01) for the sales tax.

(d) In the case of Participating Municipalities, as such term is defined in Article 6189-1 of this Regulation, the sales tax based on a total of seven (7) percent (five point five (5.5) percent indicated in paragraph (b) of this article, and one point five (1.5) percent indicated in Section 6189 of the Code) shall be imposed and collected over the total sales price of every transaction, in the following manner:

Total Sales Price	Sales Tax
\$0.00 to \$ 0.06	\$0.00
\$0.07 to \$ 0.21	\$0.01
\$0.22 to \$ 0.35	\$0.02
\$0.36 to \$ 0.49	\$0.03
\$0.50 to \$ 0.64	\$0.04
\$0.65 to \$ 0.78	\$0.05
\$0.79 to \$ 0.92	\$0.06

(1) When the calculation of the sales tax results in a fraction of half a cent (\$0.005) or more, the calculation of the sales tax shall be rounded up to charge an additional cent. On the other hand, when the calculation of the sales tax results in a fraction of less than half a cent (\$0.005), it shall not be rounded and an additional cent shall not be charged.

(2) The taxable items with a sales price between one cent (\$0.01) and six cents (\$0.06) acquired in a transaction, shall not be exempt if the total sales price of the transaction is greater than six cents (\$0.06)."

Article 2402-2

Article 2402-2 is hereby added to read as follows:

"Article 2402-2.- Use tax effective for transactions performed after July 31, 2007.- (a) Effectiveness.- The provisions of this article shall be applicable to the use, storage, or consumption of any taxable item carried out after July 31, 2007. Insofar as this article does not establish a different treatment for a specific transaction, the provisions of Article 2402-1 of this Regulation shall be applicable.

(b) General rule.- A use tax of five point five (5.5) percent of the purchase price of each transaction shall be imposed and paid for the use, storage, or consumption of any taxable item in Puerto Rico. Additionally, a fixed tax rate of one point five (1.5) percent shall be imposed, collected, and paid, by virtue of Section 6189 of the Code, in a uniform and obligatory manner, in accordance with the same base, exemptions, and limitations included in Subtitle BB of the Code, without the need of approving a municipal ordinance to such effect.

Except in the case of municipalities that have entered into an agreement to such effects with the Secretary, the obligation to pay the SUT (and the merchant's corresponding obligation to deposit, as applicable) for a fixed tax rate of one point five

(1.5) percent shall be exclusive and obligatory, based on point five (0.5) percent by the Secretary and one (1.0) percent by the municipality.

(c) The six (6) percent use tax (five point five (5.5) percent indicated in paragraph (b) of this article, and point five (0.5) percent indicated in Section 6189 of the Code) shall be imposed over the total purchase price of every transaction, in the following manner:

Total Purchase Price	Use Tax
\$0.00 to \$ 0.07	\$0.00
\$0.08 to \$ 0.24	\$0.01
\$0.25 to \$ 0.41	\$0.02
\$0.42 to \$ 0.58	\$0.03
\$0.59 to \$ 0.74	\$0.04
\$0.75 to \$ 0.91	\$0.05

(1) When the calculation of the use tax results in a fraction of half a cent (\$0.005) or more, the calculation of the use tax shall be rounded up to charge an additional cent. On the other hand, when the calculation of the use tax results in a fraction of less than half a cent (\$0.005), it shall not be rounded and an additional cent shall not be charged.

(2) The taxable items with a purchase price between one cent (\$0.01) and seven cents (\$0.07) acquired in a transaction, shall not be exempt if the total purchase price of the transaction is more than seven cents (\$0.07).

(d) In the case of Participating Municipalities, as such term is defined in Article 6189-1 of this Regulation, the seven (7) percent use tax (five point five (5.5) percent indicated in paragraph (b) of this article, and one point five (1.5) percent indicated in Section 6189 of the Code) shall be imposed and collected over the total purchase price of every transaction, in the following manner:

Total Purchase Price	Use Tax
\$0.00 to \$ 0.06	\$0.00
\$0.07 to \$ 0.21	\$0.01
\$0.22 to \$ 0.35	\$0.02
\$0.36 to \$ 0.49	\$0.03
\$0.50 to \$ 0.64	\$0.04
\$0.65 to \$ 0.78	\$0.05
\$0.79 to \$ 0.92	\$0.06

(1) When the calculation of the use tax results in a fraction of half a cent (\$0.005) or more, the calculation of the use tax shall be rounded up to charge an additional cent. On the other hand, when the calculation of the use tax results in a

fraction of less than half a cent (\$0.005), it shall not be rounded and an additional cent shall not be charged.

(2) The taxable items with a purchase price between one cent (\$0.01) and six cents (\$0.06) acquired in a transaction, shall not be exempt if the total purchase price of the transaction is more than six cents (\$0.06)."

Article 2403-3

Article 2403-3 is hereby added to read as follows:

"Article 2403-3.- Rules for determining the source of income.- (a) Effective for transactions performed after July 31, 2007, in accordance with the provisions of Section 6189 of the Code, the rules for determining the source of income generated by the sale of taxable items shall be applied in a uniform manner to all the taxes administered by the Secretary. The source of income generated by the sale of tangible personal property shall be determined, for the purpose of the SUT, using the rules indicated below. For the purpose of the five point five (5.5) percent sales tax on the sales price of taxable items in Puerto Rico and the one point five (1.5) percent fixed tax rate imposed by virtue of Section 6189 of the Code and jointly administered between the Department and the municipalities, there is only one tax jurisdiction within the territorial boundaries of the Commonwealth of Puerto Rico.

The rules for determining the source of income established herein may also, with the consent of other jurisdictions of the United States or other countries whose cooperation is needed, affect sales transactions carried out outside of Puerto Rico for consumption in Puerto Rico. These rules shall be applied in a hierarchical manner. First, the source of income shall be determined in accordance with subparagraph (1). If, in accordance with subparagraph (1), the source of income cannot be determined, then the other subparagraphs shall be considered in their respective order.

(1) When the property is given to the purchaser at the facilities of the seller, the source shall be considered to be said facility.

The provisions of this subparagraph (1) are illustrated with the following examples:

Example 1: "A" purchases a television at "B's" store. "B's" store is in Puerto Rico. "B" gives the television to "A" in the store. The income generated by this transaction is determined by this subparagraph and can be attributed to the jurisdiction where "B's" store is located, Puerto Rico.

Example 2: "A" purchases a television at "B's" store. "B's" store is in Puerto Rico. "B" delivers the television to "A" at his home. "A" lives in the Dominican Republic. The source of the income generated by this transaction cannot be determined by this subparagraph, so the rest of the subparagraphs in this article shall be applicable in hierarchical order.

(2) When the property is not given to the purchaser at the seller's facilities, the source shall be considered to be the location where it is received by the purchaser, including the address indicated by the purchaser to the seller for the transportation and delivery of the property. This subparagraph shall only be applicable when the seller has knowledge of the location where the purchaser shall receive the property, regardless of whether the property is delivered by the seller or by a third party.

The provisions of this subparagraph (2) are illustrated with the following examples:

Example 1: As indicated in Example 2 of subparagraph (1) of this paragraph, "A" purchases a television at "B's" store. "B's" store is in Puerto Rico. "B" transports and delivers the television to "A's" home. "A" lives in the Dominican Republic. The source of income generated by this transaction shall be the jurisdiction in which "A's" home is located, the Dominican Republic.

Example 2: "A", who resides in Puerto Rico, purchases a television at "B's" store. "B's" store is in Florida. "B" does not offer transportation services. "C" picks up the television in "A's" name at "B's" store without indicating the address to which the delivery will be made. "B" has kept "A's" address in his files, because "A" had provided it in the ordinary course of business. "C" transports and delivers said television to "A" at "A's" home. The source of the income generated by this transaction cannot be determined by this subparagraph, so subparagraph (3) of this paragraph shall be applicable.

(3) If subparagraphs (1) and (2) are not applicable, the source of income of the sale shall be the address of the purchaser, as it appears in the files kept by the seller in the ordinary course of business, when the use of such address does not constitute an act of bad faith. In this case, the seller shall use the address obtained from the purchaser in the ordinary course of business, whether from previous sales, or from the current one.

The provisions of this subparagraph (3) are illustrated with the following example:

Example: "A" purchases a television at "B's" store. "B's" store is in Puerto Rico. "B" does not offer transportation services. "C" picks up the television in "A's" name at "B's" store without indicating the address to which the delivery will be made, although "B" has kept "A's" address in his files, because "A" had provided it in the ordinary course of business. "C" transports and delivers the television to "A" at "A's" home. "A" lives in St. Thomas. The source of income generated by this transaction is determined based on the address that "B", in good faith, had obtained from "A" in the ordinary course of business, St. Thomas.

(4) If subparagraphs (1) to (3) are not applicable, the source of the sale shall be considered to be the purchaser's address which is obtained in the consummation process of the current sale, including the address that appears in the purchaser's instrument of payment, if there is no other address available, insofar as the use of such address does not constitute an act of bad faith.

As mentioned before, these rules for determining the source of a sale of tangible personal property shall be applied hierarchically. Therefore, subparagraph (3) shall have priority over subparagraph (4), and an address that was obtained by a seller in transactions performed in the ordinary course of business, and which has been kept in the seller's files, shall take precedence over an address obtained during the first sale made to a purchaser.

The provisions of this subparagraph (4) are illustrated with the following example:

Example: "A" purchases a television at "B's" store. "B's" store is in Puerto Rico. "B" does not offer transportation services. "C" picks up the television in "A's" name at "B's" store without indicating the address to which the delivery will be made. "B" does not have "A's" address in his files. However, "A" paid "B" with a check that has "A's"

postal address printed on it. "C" transports and delivers the television to "A" at "A's" home. "A" lives in St. Thomas. The source of income generated by this transaction is determined based on the postal address of "A" that "B," in good faith, had obtained from "A's" check, St. Thomas.

(5) When none of the previous subparagraphs are applicable, including the situation in which the seller does not have sufficient information to apply such rules, then the source of the sale shall be determined in reference to the address from which the tangible personal property was delivered or shipped.

Provided, that in the case of the sale of mobile phone call services or prepaid cellular phones, the source may be determined using the location associated with the cellular or mobile phone number as an alternative.

The provisions of this subparagraph (5) are illustrated with the following examples:

Example 1: "A" purchases a television at "B's" store. "B's" store is in the state of New York and his warehouse is in a municipality of Puerto Rico. "A" is not a regular customer of "B", he paid for the television in cash, and indicated that "C" would pick up the television at "B's" warehouse to deliver it to "A." "B" does not have sufficient information to apply any of the aforementioned rules. The source of income generated by this transaction shall be Puerto Rico, the jurisdiction in which "B's" warehouse is located, from which the television is dispatched.

Example 2: "A", a resident of Wisconsin, purchases a television at "B's" store. "B's" store and warehouse are in Puerto Rico. "A" is not a regular customer of "B", he paid for the television in cash, and indicated that "C" would pick up the television at "B's" warehouse to deliver it to "A". "B" does not have sufficient information to apply any of the aforementioned rules. The source of income generated by this transaction shall be the jurisdiction in which "B's" warehouse is located, from which the television was delivered or shipped, Puerto Rico.

(c) The source of the sale of taxable services, except for telecommunications, cable or satellite television services, and leasing of tangible personal property, shall be the location where the services are rendered. In the case of the sale of property transportation services to Puerto Rico or from Puerto Rico, which are not related to a

sale of tangible personal property, or considered delivery charges, as this term is defined in Article 2301-1(i) of this Regulation, it shall be presumed that such services were rendered at the location or locations where the majority of the costs that can be attributed to said transportation occur, even if it is outside of Puerto Rico.

The provisions of this paragraph (c) are illustrated with the following examples:

Example 1: "O" is a residential insect extermination and fumigation company with headquarters in San Juan, Puerto Rico. "O" has a sales workforce of fifty (50) people who render services in Puerto Rico and the U.S. Virgin Islands. The source of income of the residential fumigation services rendered shall be the location where "O" offers the residential fumigation services. Therefore, the source of income of the residential fumigation services rendered within the territorial boundaries of the Commonwealth of Puerto Rico shall be the Commonwealth of Puerto Rico, and "O" shall fulfill its obligation to pay the SUT by remitting the tax that can be attributed to all its sales in Puerto Rico, as indicated in this Regulation. However, "O" shall not have the obligation of collecting and remitting the SUT over the sales of the services rendered in the U.S. Virgin Islands.

Example 2: "U" is a company in the business of providing maritime merchandise transportation services between Puerto Rico and the state of Florida. "A" is an individual who is not involved in a business or industry in Puerto Rico, and a resident of Puerto Rico. "A" contracts "U's" transportation services to move his brother "B's" belongings to Florida, where "B" resides. The source of income of the transportation services rendered shall be attributed to Florida."

Article 2405-2

Article 2405-2 is hereby added to read as follows:

"Article 2405-2.- Collection of the tax effective for transactions performed after July 31, 2007.- (a) Effectiveness.- The provisions of this article shall be applicable to the sale of taxable items subject to the taxes imposed in the Code after July 31, 2007. Insofar as this article does not establish a different treatment for a certain transaction, the provisions of Article 2405-1 of this Regulation shall be applicable.

(b) In general.- The obligation of a merchant to collect and remit to the Secretary both the five point five (5.5) percent SUT indicated in Sections 2401 and 2402 of the Code and point five (0.5) percent of the SUT for a fixed tax rate of one point five (1.5) percent imposed by Section 6189 of the Code, arises when said merchant sells taxable items subject to the taxes established in the Code.

(c) Except in the cases of merchants whose Merchants' Registration Certificate indicates that they are not collectors of the SUT, or when it is otherwise provided in this article, every merchant who sells taxable items shall have the obligation to collect and remit, as established in Section 2604 of the Code, the sales tax set by Subtitle BB of the Code and point five (0.5) percent of the one point five (1.5) percent tax imposed in Section 6189 of the Code. Provided, also, that in the cases in which, under paragraph (e) of this article, a purchaser does not have an obligation to pay the tax to the merchant, the merchant who sells taxable items shall have the obligation to remit, as provided in Section 2604 of the Code, the sales tax.

(d) Any merchant who is responsible for collecting the sales tax, shall state it separately in any receipt, invoice, ticket, or any other evidence of sale, except as provided in Section 2406 of the Code. The merchant shall not have the obligation to separate the total six (6) percent tax to be remitted to the Secretary (five point five (5.5) percent indicated in Sections 2401 and 2402 of the Code, and point five (0.5) percent indicated in Section 6189 of the Code) and the one (1.0) percent tax indicated in Section 6189 of the Code to be remitted to the corresponding municipality. The merchant may display both taxes jointly, provided that the price of the taxable item and the total tax amount are displayed clearly, and that the distribution of the taxes does not require a calculation based on fractions of percentage points.

When the merchant opts to separate the tax amount, he or she shall display said information with phrases similar to the following:

"IVU", "SUT", or "Tax 1"

"IVU 2", "SUT 2", or "Tax 2"

When the merchant opts to combine the amounts of both taxes, he or she shall display said information with phrases similar to the following:

"IVU Total", "Total SUT", or "Tax"

(e) The tax shall constitute, together with the sales price, evidence of a debt of the purchaser to the merchant until it is paid, and shall be collected legally in the same manner as other debts. In the case that the merchant is not registered in the Merchants' Registry, the purchaser shall not have the obligation to pay the tax to the merchant and, therefore, said tax shall not constitute a debt of the purchaser.

(f) The taxes established in Subtitle BB and Section 6189 of the Code shall become funds of the Commonwealth of Puerto Rico and of the corresponding municipal treasury at the moment they are collected."

Article 2406-1

Paragraph (d) is hereby added to Article 2406-1 to read as follows:

"(d) Effective for transactions performed after July 31, 2007, in the case mentioned in paragraph (a) of this article, the taxes to be paid for taxable items shall be computed by subtracting from total sales (including the SUT) for the applicable reporting period, the total taxable sales for the same period. Except in the case of payments for taxes related to the sales made in Participating Municipalities, as said term is defined in Article 6189-1 of this Regulation, the taxable sales shall be determined by dividing the total sales (including the SUT) by 1.06, and the merchant or operator of the vending machine shall be responsible for complying with his or her obligation, if any, to make a SUT payment to the municipality. In the case of sales made in Participating Municipalities, as said term is defined in Article 6189-1 of this Regulation, the taxable sales shall be determined by dividing the total sales (including the SUT) by 1.07, and the merchant or operator of the vending machine shall have complied with his or her obligation of remitting the SUT to the municipality."

Article 2602(a)-2

Article 2602(a)-2 is hereby added to read as follows:

"Article 2602(a)-2.- Sales and Use Tax Monthly Return effective for transactions performed after July 31, 2007.- (a) Effectiveness.- The provisions of this article shall be applicable to sales made after July 31, 2007. Insofar as this article does not establish a different treatment for a certain transaction, the provisions of Article 2602(a)-1 of this Regulation shall be applicable.

(b) Obligation to provide information separately for each municipality.- In accordance with Section 2602(f) of the Code, persons who have the obligation to file the Monthly Return shall comply with the requirement to provide information for each municipality in which they have a commercial establishment. The term "commercial establishment" includes the business headquarters and any other location where real or personal property is sold or used, as such term is defined in Section 2301(vv) of the Code, where services are rendered, where admission fees are sold, or where bundled transactions are carried out. For these purposes, neither a vending machine nor a billboard shall be considered commercial establishments. Also, the presence of a person's employees or agents in the facilities of a client shall not turn the client's facilities into a commercial establishment of such person. In those cases where the provisions of Article 2403-3 of this Regulation are applicable, the merchant shall report jointly and as a unified total, the payment of the five point five (5.5) percent tax and point five (0.5) percent of the one point five (1.5) percent tax indicated in Section 6189 of the Code to reflect a total payment of six (6) percent. In order to fulfill the requirements of subsection (f) of Section 2706 of the Code, the Secretary shall attribute to the corresponding municipality the collection of the point five (0.5) percent. Therefore, except in the case of commercial establishments located in Participating Municipalities, as said term is defined in Article 6189-1 of this Regulation, every merchant shall have the obligation to report the remainder of the one point five (1.5) percent tax indicated in Section 6189 of the Code (one (1.0) percent of one point five (1.5) percent) to the same municipality in which the commercial establishment for which the merchant is filing the Monthly Return, is located.

The provisions of this paragraph (a) are illustrated with the following examples:

Example 1: "A" is a consultant, his office is in San Juan, and there are seven employees in his firm. "A's" employees visit clients throughout the Island and provide services in the facilities of such clients. "A" shall have the obligation to file the Monthly Return only for the establishment where his headquarters are located. The sales that can be attributed to the provision of services have the same source of income as that to which the tax imposed in Subtitle BB of the Code is applicable, the Commonwealth of Puerto Rico. Assuming that "A's" commercial establishment is not located in a

Participating Municipality, as such term is defined in Article 6189-1 of this Regulation, "A" shall file a return that computes his or her total taxable sales and shall remit to the Secretary, six (6) percent of such sales (five point five (5.5) percent imposed by Sections 2401 and 2402 of the Code and point five (0.5) percent imposed by Section 6189 of the Code).

Example 2: "B" is in the business of selling cellular phones, and has a sales office in San Juan with 10 employees. "B's" employees visit clients throughout the Island who have expressed their interest in buying cellular phones. "B's" employees conduct sales and deliver equipment at the client's facilities. "B" shall only have an obligation to file the Monthly Return for the establishment where his sales office is located. The sales and delivery of equipment made by "B's" employees at his clients' facilities shall not turn such facilities into commercial establishments of "B" for purposes of the requirement to file the Monthly Return for each commercial establishment.

Example 3: "A" is in the business of selling furniture, her store is located in San Juan, and she offers delivery services throughout Puerto Rico. "A" shall have the obligation to file the Monthly Return, and to report her sales, only for the establishment where her store is located in San Juan. The delivery of furniture to her clients' facilities does not turn such facilities into commercial establishments of "A" for the purposes of the requirement to file the Monthly Return for each commercial establishment.

(c) The Secretary shall enact a revised Monthly Return form so that merchants can report the transactions performed after July 31, 2007. Therefore, every Monthly Return filed in forms issued before the effectiveness of this Regulation for transactions carried out after August 1st, 2007, shall be considered as not filed, and the merchant shall be subject to all the applicable provisions of Subtitle F of the Code."

Article 2602(d)-2

Article 2602(d)-2 is hereby added to read as follows:

"Article 2602(d)-2.- Electronic filing of the Monthly Return effective for transactions performed after July 31, 2007.- Every merchant who is required to remit the sales tax through an electronic transfer of funds, as provided in Section 2607 of the Code, shall have the obligation to file the Monthly Return electronically. The Secretary shall accept such returns as filed on time if the transfer is initiated and accepted no later

than the twentieth (20th) day of the calendar month following the month during which such taxes were collected.

Effective for transactions performed after July 31, 2007, every return specialist who prepares SUT returns shall use electronic means when filing such returns for his or her clients.

The Secretary may waive the merchant's obligation from the requirement to make an electronic exchange of information transfer due to problems with the merchant's or the Department's computer system. To obtain such waiver, the merchant shall prove in writing to the Secretary that such circumstances exist."

Article 2602(g)-2

Article 2602(g)-2 is hereby added to read as follows:

"Article 2602(g)-2.- Telecommunications and cable or satellite television services.- Effective for transactions performed after July 31, 2007, in the case of the sale of telecommunications and cable or satellite television services, the commercial establishment that shall report the corresponding sales shall be the one for which the merchant has the obligation to report the tax imposed in Subtitle BB of the Code. If the merchant who provides such services has establishments in several Puerto Rico municipalities, each establishment shall report in the Monthly Return the sales corresponding to the services rendered within the municipality where the establishment is located, based on the rules established in this Regulation. If the merchant who provides such services does not have commercial establishments in more than one municipality in Puerto Rico, then the services shall be reported in the Monthly Return filed for the establishment where the headquarters are located."

Article 2603-1

Article 2603-1 is hereby amended to read as follows:

"Article 2603-1.- Sales and Use Tax Annual Return.- In the case of merchants that are duly registered in the Merchants' Registry, an Annual Return shall not be required for the taxable years that began during calendar years 2006 and 2007. For the taxable years that begin after December 31, 2007, all merchants who do not have an obligation to file one or more Monthly Returns showing their total sales, shall file an Annual Return reporting their total sales for their taxable year in the form approved by

the Secretary for such purposes, no later than the fifteenth (15th) day of the third calendar month following the closing of their taxable year."

Article 2705-2

Article 2705-2 is hereby added to read as follows:

"Article 2705-2.- Refund of paid taxes effective for transactions performed after July 31, 2007.- (a) In general.- The following persons may request from the Secretary, in writing, the refund of the SUT within the time period and in accordance with the proceedings indicated below:

- (1) a merchant who pays with his or her Monthly Return a SUT in excess of what is established by Subtitle BB of the Code; and
- (2) any person who pays the use tax wrongfully or excessively to the Secretary.

For the purposes of this article, a person shall be considered to have wrongfully paid or been charged for the SUT when he or she is entitled to one of the exemptions provided in Subtitle BB of the Code, or in special legislation, and he or she remits a SUT payment to the Secretary. On the other hand, for the purposes of this article, a person shall be considered to have paid or been charged excessively for the SUT when he or she is required to remit a SUT payment to the Secretary and he or she remits a sum that exceeds the total amount of the SUT computed in accordance with Sections 2401, 2402, and 6189 of the Code at a rate of six (6) percent (or at a rate of seven (7) percent in the case of Participating Municipalities, as such term is defined in Article 6189-1 of this Regulation) of the sales price or the purchase price of the taxable item, as the case may be.

The provisions of this paragraph (a) are illustrated with the following examples:

Example 1: "A" is a merchant with a commercial establishment in a Non-Participating Municipality, as such term is defined in Article 6189-1 of this Regulation, who collected six thousand (6,000) dollars from the SUT during December, 2007. In his Monthly Return for December, which is due on January 20, 2008, "A" mistakenly computed that the amount of the SUT that he had to remit to the Secretary was seven thousand (7,000) dollars. "A" is entitled to claim from the Secretary a refund for one thousand (1,000) dollars.

Example 2: "B" is a merchant in the business of providing services. "B" acquires furniture and office equipment for his office valued at five thousand (5,000) dollars from "C," a merchant in the business of selling office equipment located in a Non-Participating Municipality, as such term is defined in Article 6189-1 of this Regulation. The six (6) percent SUT administered by the Department, corresponding to that sale, is three hundred (300) dollars. "C" mistakenly collected four hundred twenty-five (425) dollars for the SUT for that sale. Such collection is an excessive collection of the SUT. "B" is not entitled to request a refund from the Secretary for the one hundred twenty-five (125) dollars that he paid in excess because his payment was made to "C". "B" shall make the corresponding claim to "C", and "C" may claim the corresponding credit or refund from the SUT remitted to the Secretary, as applicable.

Example 3: "B" is a merchant in the business of providing services and is located in a Non-Participating Municipality, as such term is defined in Article 6189-1 of this Regulation. "B" acquires furniture and office equipment for his office valued at five thousand (5,000) dollars from "C.com," a merchant in the business of selling office equipment, who does not have a nexus with Puerto Rico and makes sales through the Internet. The six (6) percent SUT administered by the Department, corresponding to that sale, is three hundred (300) dollars. "C" did not collect the SUT from "B", so "B" remitted directly to the Secretary his use tax statement, together with a payment of four hundred twenty-five (425) dollars for his purchase. Such payment is an excessive payment of the SUT. "B" is entitled to request a refund from the Secretary for the one hundred twenty-five (125) dollars that he paid in excess because his payment was made directly to the Secretary.

Example 4: "E" is a bona fide farmer who acquires a tractor for his farm valued at ten thousand (10,000) dollars from "F", a merchant who sells machinery and equipment, located in a Participating Municipality, as such term is defined in Article 6189-1 of this Regulation. "E" is entitled to purchase his machinery and equipment free from the SUT because "E" is a bona fide farmer. "F" wrongfully collected seven hundred (700) dollars for the SUT for that sale. "E" is not entitled to request a refund from the Secretary for the seven hundred (700) dollars that he wrongfully paid, because his payment was made to "F". "E" shall make the corresponding claim to "F", and "F"

may claim the corresponding credit or refund of the SUT remitted to the Secretary, as applicable.

Example 5: "E" is a bona fide farmer who acquires a tractor for his farm located in a Participating Municipality, as such term is defined in Article 6189-1 of this Regulation, valued at ten thousand (10,000) dollars from "G," a seller of machinery and equipment who is based in the United States and has no nexus with Puerto Rico. "E" is entitled to purchase his machinery and equipment free from the SUT because "E" is a bona fide farmer. "G" did not collect the SUT from "E", so "E" remitted directly to the Secretary his use tax statement, together with a payment of seven hundred (700) dollars for the purchase. Said payment is a wrongful payment of the SUT. "E" is entitled to request a refund from the Secretary for the seven hundred (700) dollars that he wrongfully paid because his payment was made directly to the Secretary.

Example 6: "D" is a merchant in the business of selling office furniture and equipment. "D" does not hold an Exemption Certificate. "D" acquires for resale, office furniture and equipment valued at five thousand (5,000) dollars from "E", a merchant who sells office equipment and is located in a Non-Participating Municipality, as such term is defined in Article 6189-1 of this Regulation. The six (6) percent SUT administered by the Department corresponding to that sale is three hundred (300) dollars. "E" collected three hundred (300) dollars for the SUT for that sale. "D" is not entitled to request from the Secretary or from the merchant a refund for the three hundred (300) dollars that he paid for the SUT, because such amount was not paid wrongfully or in excess."

Article 2801(a)-2

Article 2801(a)-2 is hereby added to read as follows:

"Article 2801(a)-2.- Merchants' Registry.- After July 31, 2007, the administration and emission of the Merchants' Registration Certificate and the Exemption Certificate provided in Section 2801 of the Code and Article 2801(a)-1 of this Regulation, shall be exclusively applied to any merchant with commercial establishments operating within the jurisdictional limits of any municipality of the Commonwealth of Puerto Rico. Thus, any merchant shall be able to evidence his or her registration and right to an exemption,

when applicable, with the documents issued by the Department, in accordance with, but without being limited to, the following rules:

(a) Integration of databases and exchange of information.- The municipalities and the Department shall integrate their databases regarding merchants who operate within the jurisdictional limits of each municipality.

(1) The Department shall facilitate quarterly to each municipality an electronic file containing the following information regarding registered merchants who operate within the jurisdictional limits of the municipality:

(i) social security or employer's identification number;

(ii) merchant's registration number;

(iii) merchant's classification:

(A) Type A: Merchants with Green Registration Certificates who have Exemption Certificates;

(B) Type B: Merchants with Green Registration Certificates; and

(C) Type C: Merchants with Red Registration Certificates.

(iv) North American Industries Classification System code (NAICS);

(v) merchant's name;

(vi) address (4 fields);

(vii) municipality; and

(viii) zip code.

(2) Each municipality shall provide to the Department, at least once a year, in the electronic format that the latter shall determine for these purposes, an electronic file with the information regarding the merchants who are registered in the municipality for the purposes of the Municipal License.

(3) Each municipality shall provide to the Department any information that the municipality obtains, and which may be useful for correcting and updating the database of merchants registered in the Merchants' Registry.

(4) The Department shall be responsible for the administration, updating, and correction of the database of merchants registered in the Merchants' Registry.

(b) Forms.- The Department shall issue the forms that the merchants shall use to apply for the Merchants' Registration and the Exemption Certificate, the Certificate for Exempt Purchases, and any other future form that the Department may determine to be necessary for the administration of the SUT. The municipality shall accept the forms issued by the Department for all required purposes as part of the administration of the SUT.

(c) Processing and issuance.- The Department itself, or through the contracting of service providers or any other method that it considers convenient, shall be responsible for the receipt and processing of the applications submitted by merchants who operate within the jurisdictional limits of each municipality and the issuance of the corresponding certificates."

Article 6188-1

Article 6188-1 is hereby added to read as follows:

"Article 6188-1.- Limitation for Fixing Taxes.- (a) Except as provided in Sections 6188 and 6189 of the Code, no municipality of the Commonwealth of Puerto Rico, autonomous or not, may impose or collect any contribution or tax established in this Code. This limitation operates as an absolute impediment to the municipal imposition of taxes similar to those established in Subtitles A, B, BB, C, and D of the Code, without excluding other ones, that is, income tax for corporations and individuals, excise taxes for items introduced to Puerto Rico, sales and use taxes, taxes on estates and donations, or taxes on alcoholic beverages.

(b) Only insofar as they are compatible with the taxes imposed by the Code and the laws of the Commonwealth of Puerto Rico, the following taxes are specifically excluded from the impediment established in Section 6188 of the Code: (1) excise taxes on construction and (2) the taxes on business volume authorized by Act No. 81 of August 30, 1991, as amended, known as the "Commonwealth of Puerto Rico Autonomous Municipalities Act" and Act No. 113 of July 10, 1974, as amended, known as the "Municipal License Act", respectively.

Therefore, when the application of the Autonomous Municipalities Act or the Municipal License Act, together with the application of this Code, produces an unsustainable tax situation because it infringes upon these provisions or any

constitutional prohibition, if such situation were sustainable through the imposition and collection of one of the contributions or taxes, the contribution or tax fixed in this Code shall prevail."

Article 6189-1

Article 6189-1 is hereby added to read as follows:

"Article 6189-1.- Municipal Sales and Use Tax.- (a) Effective on August 1st, 2007, by virtue of Section 6189 of the Code, a SUT for a fixed tax rate of one point five (1.5) percent was imposed, in a uniform and obligatory manner, without the need of approving a municipal ordinance to such effect, in accordance with the same base, exemptions, and limitations contained in Subtitle BB of the Code. This tax is additional to the five point five (5.5) percent tax indicated in Sections 2401 and 2402 of the Code for transactions involving the sale, use, storage, or consumption of a taxable item in Puerto Rico. The application of the one point five (1.5) percent tax shall be subject to the exemptions granted in Chapter 3 of Subtitle BB of the Code. Therefore, effective for transactions performed after July 31, 2007, the total and uniform imposition of the SUT in the jurisdiction of the Commonwealth of Puerto Rico includes both impositions: (1) the five point five (5.5) percent tax indicated in Sections 2401 and 2402 of the Code, and (2) the fixed tax rate of one point five (1.5) percent indicated in Section 6189 of the Code. The outcome of both provisions of the Code is the imposition of a total combined SUT of seven (7) percent, as provided by Article 2405-1 of this Regulation.

The obligation to collect (and corresponding deposit by the merchant) the tax for a fixed tax rate of one point five (1.5) percent shall be exclusive and obligatory, based on point five (0.5) percent by the Secretary of the Treasury and one (1.0) percent by the municipality, as indicated and in accordance with the rules established in Article 2405-1 of this Regulation.

Through this imposition, every person who has the obligation to collect or pay the SUT in accordance with Sections 2404 and 2405 of the Code, shall be responsible for collecting and paying the Secretary, as indicated in this Regulation and in accordance with the authority conferred by the Code, both the five point five (5.5) percent tax and the equivalent to point five (0.5) percent of one point five (1.5) percent of the tax indicated in Section 6189 of the Code. For purposes of this Regulation, any reference

to the SUT includes and is applicable to both portions of the tax established by the Code and administered by the Secretary, that is, a total obligation to pay the Secretary six (6) percent.

(b) The municipalities are authorized, discretionally, and after the approval by the Municipal Legislature of a Municipal Ordinance compatible with the Code to such effects, to establish a one (1.0) percent tax on foods and food ingredients, as such term is defined in Section 2301(a) of the Code and in paragraph (a) of Article 2301-1 of this Regulation, subject to the same exemptions and limitations contained in Subtitle BB of the Code. The approval of the tax on foods shall not have the effect of modifying the tax base provided in paragraph (a) of this article.

(c) Tax collection agreements for the tax established in Section 6189 of the Code.- Paragraph (c) of Section 6189 of the Code authorizes the Secretary and municipalities to enter into agreements to allow the Secretary to act as a central administrator and to collect the total amount of the one point five (1.5) percent tax indicated in Section 6189 of the Code. Municipalities that enter into agreements with the Secretary for the collection of one (1.0) percent of the one point five (1.5) percent of the tax indicated in Section 6189 of the Code, shall be known as Participating Municipalities.

(1) Non-Participating Municipalities.- In the case of Merchants with commercial establishments in municipalities for which the Department does not act as a central administrator of the SUT, they shall collect a joint SUT of seven (7) percent, subject to the rules of Article 2405-2 of this Regulation. These merchants shall remit directly to the municipality in which their commercial establishment is located, the collected one (1.0) percent tax, computed based on the total of taxable sales and purchases stated on the Department's Monthly Return. On the other hand, they shall remit to the Department the six (6) percent collected SUT (five point five (5.5) percent indicated in Sections 2401 and 2402 of the Code and point five (0.5) percent indicated in Section 6189 of the Code), together with the Department's Monthly Return.

In the case that the Non-Participating Municipality has opted to approve a Municipal Ordinance compatible with the Code to establish a one (1.0) percent tax on the sale of foods and food ingredients, as such term is defined in Section 2301(a) of the Code, such tax shall be collected separately by the Municipality.

(2) Participating Municipalities.- In the case of Merchants with commercial establishments in municipalities for which the Department acts as a central administrator of the SUT, they shall collect a joint SUT of seven (7) percent (five point five (5.5) percent indicated in Sections 2401 and 2402 of the Code and one point five (1.5) percent indicated in Section 6189 of the Code) and remit such amount together with the Department's Monthly Return.

(3) In the case of Participating Municipalities, the Department shall remit to the bank accounts designated by the municipalities, the total of the collected amounts within one (1) business day. For these purposes, the term "collected" refers to all amounts that, in accordance with the terms of the agreement between the Secretary and the municipality, have been received, approved, and processed by the issuing bank as well as the receiving bank designated by the Secretary, and applied to a specific commercial establishment of a merchant. The amounts collected by the Secretary for the tax indicated in Section 6189 of the Code shall not be used by the Executive Branch, including agencies, departments, instrumentalities, or public corporations, or retained for any purpose.

(d) Responsibility of the banking institutions and private businesses.- (1) Paragraph (c) of Section 6189 of the Code authorizes municipalities to enter into agreements with private businesses to collect the one (1.0) percent tax indicated in Section 6189 of the Code. In accordance with paragraph (d) of Section 6189 of the Code, in the case of merchants with commercial establishments in the municipalities that have entered into agreements with private businesses, who make their tax payments through electronic transactions, the banking institution or private business that manages the points of sale or the corresponding deposit, shall remit the portion that constitutes one (1.0) percent of the one point five (1.5) percent tax indicated in Section 6189 of the Code, directly to the municipality's account. Provided, that such

requirement shall not be applicable when a municipality enters into a uniformity agreement with the Department.

(2) The provisions of this paragraph shall not be interpreted in such a way that a merchant will have the obligation, during one month, to file more than one Monthly Return or its equivalent, in violation of the provisions of Article 2602(a)-1 of this Regulation.

(3) The provisions of this paragraph shall not be interpreted in such a way that a merchant will have the obligation to issue a payment before the twentieth (20th) day of the calendar month following the month during which the transaction subject to the tax occurred, in violation of the provisions of Article 2606-1, or in a manner different to that which the Secretary shall determine when the provisions of Article 2602(a)-1(b) are applicable to merchants whose deposits of the tax imposed in Subtitle BB and Section 6189 of the Code for the previous tax year exceed thirty thousand (30,000) dollars.

(e) All the interpretative determinations regarding the SUT enacted by the Secretary, such as Regulations, Informative Bulletins, Circular Letters, Administrative Determinations, and Closing Agreements shall be applicable to the interpretation and administration of the five point five (5.5) percent tax indicated in Sections 2401 and 2402, and the one point five (1.5) percent tax imposed by Section 6189 of the Code.

(f) Municipal Ordinances.- Insofar as, in accordance with the provisions of Section 6189 of the Code, as amended by Act No. 80 of July 29, 2007, the imposition of the additional tax rate of one point five (1.5) percent operates *ex proprio vigore* and in such a way that it produces total uniformity of application and administration among all the municipal taxing jurisdictions, it is unnecessary and incompatible with the provisions of Section 2410 of the Code for a municipality to maintain a municipal ordinance that provides for the imposition of the SUT authorized by the Secretary in accordance with Section 6189 of the Code. Therefore, except for the provisions of subparagraph (1) of this paragraph, any municipal ordinance that establishes sales and use tax, approved before August 1st, 2007, is incompatible with the Code and its provisions.

Any municipality that does not have an ordinance compatible with the Code for the imposition of the one point five (1.5) percent tax imposed by Section 6189 of the Code effective on August 1st, 2007 or that, having such ordinance, it is incompatible with the Code, it shall be understood that, in accordance with Section 6189 of the Code, it has imposed a tax of one point five (1.5) percent on the sale, use, storage, or consumption of taxable items in accordance with the same base, exemptions, and limitations of Subtitle BB of the Code.

(1) A municipality may approve or amend a municipal ordinance for the imposition of a one point five (1.5) percent tax on the sale, use, storage, or consumption of taxable items. The ordinance approved to such effect shall maintain uniformity and be consistent with the provisions of the Code and this Regulation. For such purposes, the following model language for an ordinance is considered compatible:

"Whereas: Section 6189 of the Puerto Rico Internal Revenue Code of 1994, as amended (hereinafter, the Code), establishes that all Municipalities shall impose, in a uniform and obligatory manner, a one point five (1.5%) percent sales and use tax, in accordance with the same base, exemptions, and limitations contained in Subtitle BB of the abovementioned Code.

Whereas: The obligation imposed by the Code to collect one point five (1.5) percent shall be exclusive and obligatory, based on point five (0.5) percent by the Secretary of the Treasury (hereinafter, the Secretary) and one (1.0) percent by all of the municipalities.

Whereas: The Mayor hereby reports to this Municipal Legislature that, in accordance with Section 6189 of the Code, all the applicable provisions of Subtitle BB and Subtitle F of the Code, as well as all the interpretative determinations enacted to date and to be enacted by the Secretary, such as Regulations, Informative Bulletins, Circular Letters, Administrative Determinations, and Closing Agreements, shall be applicable for the interpretation and administration of the one point five (1.5) percent tax.

Therefore: In keeping with the aforementioned, regarding all transactions performed after July 31, 2007, every person shall have the obligation to collect and pay in a uniform manner a sales and use tax of one point five (1.5) percent, in accordance

with the same base, exemptions, and limitations contained in Subtitle BB of the Puerto Rico Internal Revenue Code of 1994, as amended.

Therefore: In keeping with the aforementioned, the Secretary shall have the obligation to collect in an exclusive and obligatory manner, point five (0.5) percent of the one point five (1.5) percent tax, and the Municipality shall have the obligation to collect one (1.0) percent of the one point five (1.5) percent tax.

Therefore: In keeping with the aforementioned, the amount reported on the *Sales and Use Tax Monthly Return* (Form AS 2915.1) of the Department of the Treasury as the total amount subject to the sales and use tax, shall be the same amount for which the one (1.0) percent for which the Municipality is responsible shall be paid, in accordance with Section 6189 of the Code.

The Municipality may approve all the forms needed to report the one (1.0) percent of the one point five (1.5) percent tax to be collected by the Municipality.

If part of any clause, section, or paragraph of this Ordinance were declared null, illegal, or unconstitutional by a competent court in the matter, this shall not affect the effectiveness of the rest of the Ordinance.

Any Ordinance or resolution or part thereof that is in conflict with this Ordinance is hereby repealed.

This Ordinance shall become effective on August 1st, 2007, subject to the approval of the Municipal Legislature and the Mayor's signature.

A duly certified copy of this Ordinance shall be remitted to the Mayor, the Department of the Municipal Secretariat, the Finance Department, the Territorial Ordinance and Planning Office, the Office of the Commissioner on Municipal Issues, and the Secretary of the Treasury for his or her acknowledgement and corresponding action."

(2) In the case of municipalities that, in accordance with the provisions of Section 6189 of the Code, exercise their discretion to establish a one (1.0) percent tax on the sale of foods and food ingredients, they shall include the following language in the municipal ordinance:

"In accordance with Section 6189 of the Code, the Mayor is hereby authorized to establish a one (1.0) percent tax on the sale of foods and food ingredients, as such term is defined in Section 2301(a) of the Code and its regulatory provisions.

The foods and food ingredients sales total subject to tax and the one (1.0) percent tax on the sale of such foods and food ingredients shall be reported separately in the forms approved by the Municipality for reporting the one (1.0) percent of the one point five (1.5) percent tax to be collected by the Municipality.

Likewise, and in accordance with the aforementioned Section 6189 of the Code, all the applicable provisions of Subtitle BB and Subtitle F of the Code, as well as all the interpretative determinations enacted to date and to be enacted by the Secretary, such as Regulations, Informative Bulletins, Circular Letters, Administrative Determinations, and Closing Agreements, shall be applicable for the interpretation and administration of the one (1.0) percent tax on foods and food ingredients."

EFFECTIVENESS: This Regulation shall become effective immediately after it is filed at the Department of State, in accordance with Article 7 of Act No. 80 of July 29, 2007.

Approved in San Juan, Puerto Rico, on November 20, 2008.

Angel A. Ortiz García
Secretary of the Treasury

Filed at the Department of State on November 20, 2008.